

Executive Order 12580: Superfund Implementation

Background: Executive Order (E.O.) 12580 delegated to various Federal officials the responsibilities vested in the President for implementing the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). This E.O. and the National Contingency Plan (NCP)—the implementing regulations of CERCLA—are the basis of DOE's authority to implement CERCLA at DOE facilities. The E.O. delegates the authority and responsibility to DOE, while the NCP describes EPA's procedures for implementing the CERCLA program. DOE is required to carry out a number of key functions, including, providing representatives to the National Response Team (NRT), the interagency organization responsible for planning for and responding to CERCLA releases; acting as a natural resource trustee for land that DOE manages; performing natural resource damage assessments (NRDA); and assuming authority for response actions resulting from releases of hazardous substances on, over, or under land that DOE manages. Because E.O. 12580 is one of the sources of DOE's delegated authority under CERCLA, it is important that DOE staff and contractors understand the Order's purpose and scope and how CERCLA, the E.O., and the NCP interact to delegate to DOE the authority to conduct environmental restoration activities at its facilities.

Statute: Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986.

Regulations: 40 CFR Part 300, National Oil and Hazardous Substances Pollution Contingency Plan, commonly known as the National Contingency Plan; 43 CFR Part 11, National Resource Damage Assessments; 57 *FR* 17453 (*Federal Register* notice on EPA's plan to propose Subpart K of the NCP).

- References:**
1. Executive Order 12580.
 2. Environmental Guidance Program Reference Book, *Comprehensive Environmental Response, Compensation, and Liability Act*, ORNL/M-2261, Oak Ridge National Laboratory, January 1993.
 3. DOE Order 5400.1, *General Environmental Protection Program*.
 4. DOE Order 5400.4, *Comprehensive Environmental Response, Compensation, and Liability Act Requirements*.
 5. "Federal Agency Hazardous Waste Compliance Docket," EH-231 CERCLA Information Brief, EH-231-011/0192, January 1992.

What is Executive Order 12580?

On January 23, 1987, the President of the United States signed Executive Order 12580 entitle, "Superfund Implementation," that delegates to a number of Federal departments and agencies the authority and responsibility to implement certain provisions of CERCLA. The policies and procedures for implementing these provisions (e.g., carrying out response actions and fulfilling natural resource trusteeship responsibilities) are spelled out in the NCP.

How does the E.O. provide authority for DOE to implement CERCLA program requirements?

The Order:

- establishes the NRT to carry out the responsibilities specified by the NCP;
- requires the EPA Administrator to consult with the members of the NRT prior to revising and republishing the NCP;
- delegates to the Secretary of Energy certain responsibilities and functions related to hazardous substance response activities (e.g., remedial and removal investigations and actions, and creation of an information repository and administrative record) when the release is on or the sole source of the release is from any facility or vessel under the control of DOE; and
- delegates to DOE Federal trustee responsibilities for natural resources designated in the NCP.

What are the Federal facility response requirements under CERCLA and the NCP?

Federal facilities are required to:

- submit appropriate information for EPA to establish and maintain the Hazardous Waste Compliance Docket (*see reference 5*);
- conduct a preliminary assessment for each departmental facility on the docket;
- evaluate such facilities in accordance with the requirements established under the NCP;
- begin a remedial investigation and feasibility study (RI/FS) in consultation with EPA;
- enter into an interagency agreement (IAG) with EPA for the expeditious completion by the department or agency of all necessary removal or remedial actions at each site listed on the National Priorities List (NPL);
- conduct removal or remedial actions as appropriate; and
- prepare a community relations plan, create and maintain an information repository and administrative record, prepare an analysis of the proposed plan, and publish notices of their availability.

Any actions taken by Federal facilities beyond those required by CERCLA and the NCP are limited by Section 120(a) of CERCLA, which states that "no department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the [EPA] Administration under this Act."

How are requirements applicable to DOE sites presented in the NCP?

The NCP designates DOE as the lead response agency at Departmental facilities. DOE's responsibilities as lead agency are described throughout the NCP and include:

- providing support to the NRT (40 CFR 300.110) and the Regional Response Team (300.115);
- supporting emergency preparedness activities including Federal, State, and local government planning and coordination (300.205) and preparation of Federal Contingency Plan (300.210);
- conducting hazardous substance response activities, which include discovery or notification; removal site evaluation; removal action; remedial site evaluation; establishing remedial priorities; RI/FS and selection of remedy; remedial design/remedial action; operation and maintenance; and procedures for planning and implementing off-site response actions (300.400-300.440);
- fulfilling responsibilities as a trustee for natural resources (300.615); and
- establishing an administrative record that contains the documents that form the basis for the selection of a response action (300.800-300.825).

Does EPA intend to consolidate requirements applicable to Federal facilities in a single section of the NCP?

EPA plans to propose 40 CFR 300 Subpart K of the NCP in the *Federal Register*. (See 57 FR 17453 for the announcement.) Subpart K will be a roadmap to the NCP for Federal facilities. It will contain references to all requirements that Federal agencies must follow when conducting CERCLA response actions where the release is on, or where the sole source of the release is from their facility.

How does DOE implement E.O. 12580?

In November 1989 DOE established its environmental protection and compliance program requirements under DOE Order 5400.1 to assure compliance with all applicable Federal, State, and local environmental protection laws, regulations, E.O.s and internal DOE policies. DOE Order 5400.4, *CERCLA Requirements* (October 6, 1989) specifically established and implemented DOE policies and procedures under CERCLA as prescribed by the NCP, under the authority of E.O. 12580, and within the framework established by 5400.1.

What are DOE's responsibilities and policies under DOE Order 5400.4?

DOE Order 5400.4 required designated departmental elements to respond to releases and potentially imminent releases of hazardous substances when such releases are on, or the sole source of the release is from, any facility or vessel under DOE jurisdiction, custody, or control, including vessels bareboat chartered and operated. In addition to these responsibilities, the Order requires DOE to:

- enter into IAGs and/or Federal Facility Agreements (FFAs), at NPL sites and non-NPL sites wherever practical, with Federal, State, and local entities for the execution of RI/FS and remedial actions;
- integrate the procedural and documentation requirements of CERCLA and National Environmental Policy Act (NEPA) wherever practical; and
- implement the NRDA process (43 CFR Part 11) when DOE determines that natural resources under its trusteeship may have been potentially injured by a release of a hazardous substance.

Are DOE facilities specifically listed in the NCP?

Appendix B to the NCP contains a complete list of NPL sites throughout the country. A Federal facilities section of this Appendix includes DOE sites on the NPL.

Questions of policy or questions requiring policy decisions will not be dealt with in EH-231 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this information brief to Katherine Nakata, RCRA/CERCLA Division, EH-231, (202) 586-0801.